WYMAN *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

No. 140. Argued October 4, 1923.—Decided October 22, 1923.

Decided upon the authority of *Brede* v. *Powers*, *ante*, 4. Affirmed.

ERROR to the District Court for the Eastern District of New York, to review a judgment sentencing the plaintiff in error to imprisonment for 45 days in the Essex County Jail, Newark, New Jersey, for the offense of selling whisky for "beverage purposes," in violation of § 3, Title II, of the National Prohibition Act, 41 Stat. 305, 308. The prosecution was by information.

Mr. Otho S. Bowling, with whom *Mr. Robert H. Elder* was on the briefs, for plaintiff in error.

Mr. Solicitor General Beck and *Mrs. Mabel Walker Willebrandt*, Assistant Attorney General, appeared for the United States.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Plaintiff in error was proceeded against by an information for the violation of a section of the National Prohibition Act.

A motion was made to dismiss the information on the ground that the crime charged was an infamous one within the meaning of the Fifth Amendment to the Constitution of the United States, in that by reason of the statutes of the United States and those of New York and New Jersey, the court had power to impose an infamous punishment, namely imprisonment at hard labor and

imprisonment at involuntary labor, and that, therefore, Wyman could not be held to answer for such crime except upon presentment or indictment by a grand jury.

The motion was denied and after trial plaintiff in error was found guilty and sentenced to imprisonment for a term of 45 days in the Essex County jail, Newark, New Jersey.

To review this conviction and sentence is the purpose of this writ of error.

It will be observed that the case is identical in its legal aspects with *Brede* v. *Powers*, just decided, *ante*, 4. For the reasons stated in the opinion in that case, the proceedings, action and judgment are

Affirmed.

MR. JUSTICE MCREYNOLDS and MR. JUSTICE BRANDEIS concur in the result.